



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-120

For business meeting on: September 25, 2020

Title

Criminal Procedure: Multicounty
Incarceration and Supervision

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 4.452

Effective Date

January 1, 2021

Recommended by

Criminal Law Advisory Committee
Hon. J. Richard Couzens, Chair

Date of Report

September 25, 2020

Contact

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Executive Summary

The Criminal Law Advisory Committee recommends amending California Rules of Court, rule 4.452, to distinguish and clarify procedures applying to sentences under Penal Code section 1170(h) and state prison.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2021, amend California Rules of Court, rule 4.452, to (1) clarify that certain provisions apply only to sentences under Penal Code section 1170(h), (2) add procedures for when a subsequent court sentences a defendant to state prison when the prior sentence was under section 1170(h), and (3) clarify that subsequent courts may not increase the custody or mandatory supervision portion of the sentence imposed by the previous court.

The amended rule is attached at pages 4–6.

Relevant Previous Council Action

The Judicial Council amended rule 4.452, effective July 1, 2019, in response to Senate Bill 670 (Stats. 2017, ch. 287). Senate Bill 670 amended Penal Code section 1170(h) (see Link A), effective January 1, 2018, requiring courts to determine the county or counties of incarceration and supervision for defendants when imposing judgments concurrent with or consecutive to another judgment or judgments previously imposed under section 1170(h) in another county or counties. SB 670 also amended section 1170.3, requiring the Judicial Council to adopt rules of court providing criteria for trial judges to consider at the time of sentencing when determining the county or counties of incarceration and supervision.

Analysis/Rationale

The proposal distinguishes procedures for structuring multicounty sentences that are all under Penal Code section 1170(h) and multicounty sentences with earlier sentences under Penal Code section 1170(h) and subsequent state prison sentences. Penal Code section 1170(h)(6) governs the former and gives the second or subsequent court statutory authority to determine the county or counties of incarceration and supervision for defendants when imposing judgments concurrent with or consecutive to another judgment or judgments previously imposed under section 1170(h) in another county or counties. Penal Code sections 1170.1(a) (see Link B) and 669(d) (see Link C) govern the latter, and the second or subsequent court imposing a state prison sentence only has jurisdiction over that case. The earlier sentencing court must determine whether its sentence is concurrent or consecutive to the subsequent court's sentence, and does not have jurisdiction over modifications of the earlier sentence under Penal Code section 1170(h).

Policy implications

Any policy implications are derived from the legislation.

Comments

This proposal circulated for comment from April 10 to June 9, 2020, and received four comments, one in agreement, one stating no position, and two in opposition. In general, the comments in opposition were concerned that the proposed changes did not provide sufficient safeguards for defendants because the changes allow a subsequent sentencing judge to modify a previous sentence under section 1170(h) without the defendant's consent if the defendant is being sentenced to prison on the subsequent case. In response, the committee notes that this is consistent with statute; the proposed changes to paragraphs (a)(4) and (5) are based on Penal Code sections 669(d) and 1170.1(a). When a subsequent court sentences a defendant to state prison, the aggregate term must be served in state prison, regardless of whether one of the terms specifies a county jail sentence under Penal Code section 1170(h). Because of this statutory scheme, the defendant's consent to changes in the previous sentence is not required when a subsequent sentence is to state prison.

A commenter further suggested amending the rule to require that the second or subsequent court imposing a sentence to state prison address or modify specified aspects of the earlier section 1170(h) sentence. The committee declined the suggestions, noting that the second or subsequent

court imposing a state prison sentence only has jurisdiction over that case. The earlier sentencing court must determine whether its sentence is concurrent or consecutive to the subsequent court's sentence. The second or subsequent court does not have jurisdiction over modifications of the earlier Penal Code section 1170(h) case.

Alternatives considered

In developing the proposal, the committee considered a suggestion to add procedures for multicounty sentences involving mandatory supervision under section 1170(h), where the principal term of the prior sentence becomes a consecutive subordinate term as a result of what the second or subsequent court does in the sentencing of the current case. In these circumstances, the length of the prior term is reduced by operation of law rather than by exercise of discretion by the second or subsequent court, and the routine judicial response is for the prior court to restructure the earlier sentence. The committee did not think it was necessary to further clarify this procedure in the rule.

Fiscal and Operational Impacts

The recommended amendments clarify procedures on multiple county sentencing. Operational impacts may include additional training and updating docket codes and sentencing procedures. No additional fiscal and operational impacts are anticipated as a result of amending rule 4.452.

Attachments and Links

1. Cal. Rules of Court, rule 4.452, at pages 4–6
2. Chart of comments, at pages 7–25
3. Link A: Penal Code section 1170,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1170.&lawCode=PEN
4. Link B: Penal Code section 1170.1,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1170.1.&lawCode=PEN
5. Link C: Penal Code section 669,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=669&lawCode=PEN

Rule 4.452 of the California Rules of Court is amended, effective January 1, 2021, to read:

1 **Rule 4.452. Determinate sentence consecutive to prior determinate sentence**

2
3 (a) If a determinate sentence is imposed under section 1170.1(a) consecutive to one or
4 more determinate sentences imposed previously in the same court or in other
5 courts, the court in the current case must pronounce a single aggregate term, as
6 defined in section 1170.1(a), stating the result of combining the previous and
7 current sentences. In those situations:

8
9 (1) The sentences on all determinately sentenced counts in all the cases on which
10 a sentence was or is being imposed must be combined as though they were all
11 counts in the current case.

12
13 (2) The ~~judge~~ court in the current case must make a new determination of which
14 count, in the combined cases, represents the principal term, as defined in
15 section 1170.1(a). The principal term is the term with the greatest punishment
16 imposed including conduct enhancements. If two terms of imprisonment have
17 the same punishment, either term may be selected as the principal term.

18
19 (3) Discretionary decisions of ~~the judges~~ courts in previous cases may not be
20 changed by the ~~judge~~ court in the current case. Such decisions include the
21 decision to impose one of the three authorized terms of imprisonment
22 referred to in section 1170(b), making counts in prior cases concurrent with
23 or consecutive to each other, or the decision that circumstances in mitigation
24 or in the furtherance of justice justified striking the punishment for an
25 enhancement. However, if a previously designated principal term becomes a
26 subordinate term after the resentencing, the subordinate term will be limited
27 to one-third the middle base term as provided in section 1170.1(a).

28
29 (4) If all previously imposed sentences and the current sentence being imposed
30 by the second or subsequent court are under section 1170(h), ~~the second or~~
31 ~~subsequent~~ judge court has the discretion to specify whether a previous
32 sentence is to be served in custody or on mandatory supervision and the terms
33 of such supervision, but may not, without express consent of the defendant,
34 modify the sentence on the earlier sentenced charges in any manner that will
35 (i) increase the total length of the sentence imposed by the previous court;
36 (ii) increase the total length of the ~~actual~~ custody time portion of the sentence
37 imposed by the previous court; (iii) increase the total length of the mandatory
38 supervision portion of the sentence imposed by the previous court; or
39 (iv) impose additional, more onerous, or more restrictive conditions of
40 release for any previously imposed period of mandatory supervision.

41

1 (5) If the second or subsequent court imposes a sentence to state prison because
2 the defendant is ineligible for sentencing under section 1170(h), the
3 jurisdiction of the second or subsequent court to impose a prison sentence
4 applies solely to the current case. The defendant must be returned to the
5 original sentencing court for potential resentencing on any previous case or
6 cases sentenced under section 1170(h). The original sentencing court must
7 convert all remaining custody and mandatory supervision time imposed in the
8 previous case to state prison custody time and must determine whether its
9 sentence is concurrent with or consecutive to the state prison term imposed
10 by the second or subsequent court and incorporate that sentence into a single
11 aggregate term as required by this rule. (A)(4) does not apply—and the
12 consent of the defendant is not required—for this conversion and
13 resentencing.

14
15 ~~(5)(6)~~ In cases in which a sentence is imposed under the provisions of section
16 1170(h) and the sentence has been imposed by courts in two or more
17 counties, the second or subsequent court must determine the county or
18 counties of incarceration or supervision, including the order of service of
19 such incarceration or supervision. To the extent reasonably possible, the
20 period of mandatory supervision must be served in one county and after
21 completion of any period of incarceration. In accordance with rule 4.472, the
22 second or subsequent court must calculate the defendant's remaining custody
23 and supervision time.

24
25 ~~(6)(7)~~ In making the determination under ~~subdivision (a)(5)~~ ~~(a)(6)~~, the court must
26 exercise its discretion after consideration of the following factors:

27
28 (A)–(H) * * *

29
30 ~~(7)(8)~~ If after the court's determination in accordance with ~~subdivision (a)(5)~~ ~~(a)(6)~~
31 the defendant is ordered to serve only a custody term without supervision in
32 another county, the defendant must be transported at such time and under
33 such circumstances as the court directs to the county where the custody term
34 is to be served. The defendant must be transported with an abstract of the
35 court's judgment as required by section 1213(a), or other suitable
36 documentation showing the term imposed by the court and any custody
37 credits against the sentence. The court may order the custody term to be
38 served in another county without also transferring jurisdiction of the case in
39 accordance with rule 4.530.

40
41 ~~(8)(9)~~ If after the court's determination in accordance with ~~subdivision (a)(5)~~ ~~(a)(6)~~
42 the defendant is ordered to serve a period of supervision in another county,
43 whether with or without a term of custody, the matter must be transferred for

1 the period of supervision in accordance with provisions of rule 4.530(f), (g),
2 and (h).

3
4 **Advisory Committee Comment**

5
6 The restrictions of ~~subdivision (a)~~(3) do not apply to circumstances where a previously imposed
7 base term is made a consecutive term on resentencing. If the ~~judge~~ court selects a consecutive
8 sentence structure, and since there can be only one principal term in the final aggregate sentence,
9 if a previously imposed full base term becomes a subordinate consecutive term, the new
10 consecutive term normally will become one-third the middle term by operation of law (section
11 1170.1(a)).

SPR20-12

Criminal Procedure: Multicounty Incarceration and Supervision (Amend Cal. Rules of Court, rule 4.452)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Scott B. Garner, President	N	<p>SPR20-12 proposes to amend CRC 4.452, which provides the framework for imposing consecutive determinative sentences. SPR20-12 makes a few minor technical changes throughout the rules, but it makes significant changes to (a)(4) and also adds (a)(5). Originally, the rule outlined in (a)(4) explained that if a person had been sentenced to a determinate sentence, and then was later sentenced to another determinate sentence, the subsequent judge could decide whether the previous sentence would be served in custody or on mandatory supervision. However, the court's power was limited here because this portion of the rule also provided that under no circumstances could the sentencing judge modify the earlier sentence to increase the total length of custody time, the period of supervision, or any other additional restrictions without the defendant's express consent.</p> <p>The changes to (a)(4) and new (a)(5) now provide that a subsequent sentencing judge can modify the previous sentence without the defendant's consent if the defendant is being sentenced to prison on the subsequent case. However, this new paragraph does not implement the same safeguards that the Judicial Council found crucial when enacting the original paragraph (a)(4). There is also no indication from the proposal why such a change is necessary or what problem this should hope to solve.</p>	<p>No response required.</p> <p>The proposed changes to (a)(4) and (5) are based on Penal Code sections 669(d) and 1170.1(a). When a subsequent court sentences a defendant to state prison, the aggregate term must be served in state prison, regardless as to whether one of the terms specifies a county jail sentence under Penal Code section 1170(h). Because of this statutory scheme, the defendant's consent to changes in the previous sentence is not required when a subsequent sentence is to state prison.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

SPR20-12

Criminal Procedure: Multicounty Incarceration and Supervision (Amend Cal. Rules of Court, rule 4.452)

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	Commenter	Position	Comment	Committee Response
			<p>These rule changes are confusing, superfluous, and fail to protect a defendant’s statutory and constitutional rights to enforcement of his or her plea bargain. Moreover, these rule changes would risk undermining finality of judgments and result in a class of defendants who may be entitled to later plea withdrawals or worse, possible litigation back and forth across county lines.</p>	<p>The proposed changes to the rule reflect the existing statutory scheme on structuring multicounty sentences involving previous sentences under Penal Code section 1170(h) and subsequent state prison sentences.</p>
2.	<p>Orange County Public Defender by Miles David Jessup, Senior Deputy Public Defender</p>	N	<p>The Orange County Public Defender’s Office disagrees with the proposed substantive modifications¹ to Rule 4.452 (“the Rule”). The Rule was formulated in its original adopted form in part to address the concerns undermined by this proposed rule modification, and if adopted, this modification will again raise serious Constitutional concerns and will jeopardize the finality of many negotiated dispositions. Any final aggregate sentence must not be permitted to increase an aspect of punishment agreed to by the defendant as a condition of pleading guilty, and it must not negate rulings for clemency handed down by the original judge handling the sentencing on a matter.</p> <p>¹ New paragraph 5 and the first two lines added to paragraph 4 substantively change the existing Rule of Court. The other proposed changes clarify and are not problematic.</p> <p>Nothing in the authorization for the Rule implied that a last in time judge, by virtue of handling a later resolved matter, was</p>	<p>The proposed changes to the rule reflect the existing statutory scheme on structuring multicounty sentences involving previous sentences under Penal Code section 1170(h) and subsequent sentences to state prison.</p> <p>The proposed changes to (a)(4) and (5) are based on Penal Code sections 669(d) and 1170.1(a). When a subsequent court sentences a</p>

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	Commenter	Position	Comment	Committee Response
			<p>empowered to ignore sentencing limits in a plea agreement or to denigrate the discretionary sentencing determinations of earlier in time judges.</p> <p>The Rule should acknowledge defense rights to rely upon the judgment of the original sentencing judge (see generally, <i>People v. Arbuckle</i> (1978) 22 Cal.3d 749, 756–757, K.R. v. Superior Court (2017) 3 Cal.5th 295), and may need to specify different procedures for sentencing events on crimes that might be violations of earlier terms of conditional release, verses those that are simply later sentences.²</p> <p>² The proposed changes even disregard the Judicial Council’s acknowledgement in the second bullet point of “The Proposal” regarding defense rights to revocation hearings and summary imposition of prison for mandatory supervision.</p> <p>The limitation added to paragraph (4) is not necessary, and undermines the rules outlined in that paragraph. It is not necessary because any last in time sentencing judge imposing a state prison sentence is perfectly capable of addressing the earlier sentence per Penal Code³ section 1170, subdivision (h) (“§ 1170(h)”), so long as that judge complies with the guidelines</p>	<p>defendant to state prison, the aggregate term must be served in state prison, regardless as to whether one of the terms specifies a county jail sentence under Penal Code section 1170(h). Because of this statutory scheme, consideration of a defendant’s prior plea agreement or the discretionary sentencing determinations of earlier in time judges is not required when a subsequent sentence is to state prison.</p> <p>Please see response above.</p> <p>The last in time sentencing judge, if sentencing a defendant to state prison, does not have jurisdiction to address earlier sentences under Penal Code section 1170(h).</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Response
			<p>in paragraph (4) of the Rule. Some suggestions are offered which may assist subsequent sentencing judges to efficiently and legally impose aggregate sentences without need to transfer cases back to earlier sentencing jurisdictions.</p> <p>³ Further statutory section (§) references are to the Penal Code unless otherwise specified.</p> <p>The proposal in its current form undermines finality of judgments and invites widespread error, as any judge reformulating a prior sentence may be led to disregard the sentencing parameters that induced the guilty plea and discretionary sentencing calls made by the earlier presiding sentencing judge. This would risk undermining finality of judgments and producing a vast class of defendants entitled to plea withdrawals or enforcement of previously imposed dispositions.</p> <p>While the entirety of the substantive rule changes should be considered together, the proposal can reasonably be segmented into three themes, each independently flawed, with the combined proposal very inefficient and problematic. One component of the proposed rule would disempower the last in time sentencing judge from handling the aggregate sentence even if that judge could do so with complete respect for terms of earlier plea bargains and judicial discretionary choices. The next component would purport to require conversion of all remaining custody time (jail)</p>	<p>Please see response above.</p> <p>No response required.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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Criminal Procedure: Multicounty Incarceration and Supervision (Amend Cal. Rules of Court, rule 4.452)

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	Commenter	Position	Comment	Committee Response
			<p>and conditional release time (mandatory supervision) to state prison custody time (disregarding terms of plea bargains and revoking judicial discretion), while failing to account for rules of consecutive determinate sentencing. The final component specifically authorizes imposition of sentences inconsistent with plea bargains and prior judicial discretionary sentencing decisions.</p> <p>Proposed new paragraph (5) would provide that: If the second or subsequent court imposes a sentence to state prison because the defendant is ineligible for sentencing under section 1170(h), the jurisdiction of the second or subsequent court to impose a prison sentence applies solely to the current case. The defendant must be returned to the original sentencing court for potential resentencing on any previous case or cases sentenced under section 1170(h). The original sentencing court must convert all remaining custody and mandatory supervision time imposed in the previous case to state prison custody time and must determine whether its sentence is concurrent with or consecutive to the state prison term imposed by the second or subsequent court and incorporate that sentence into a single aggregate term as required by this rule. Number (4) does not apply — and the consent of the defendant is not</p>	

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	Commenter	Position	Comment	Committee Response
			<p>required—for this conversion and resentencing.</p> <p>PROBLEM/COMPONENT 1: EVERY EARLIER § 1170(h) SENTENCE MUST BE REMANDED FOR RESENTENCING⁴</p> <p>Proposed additional paragraph (5) would specifically disempower the second or subsequent judge from presiding over the determination and imposition of the aggregate sentence, even if that judge could reasonably do so in compliance with law. This is entirely unnecessary as the final sentencing judge would be entirely capable of modifying the earlier sentence, on the same terms as the original sentencing judge and subject to the same constraints.</p> <p>The final sentencing judge is clearly empowered to terminate any remaining period of mandatory supervision in an earlier § 1170(h) sentence, based on changed circumstances since the original pleading. This is supported by the plain terms of § 1170(h)(5)(B).</p> <p>⁴“If the second or subsequent court imposes a sentence to state prison because the defendant is ineligible for sentencing under section 1170(h), the jurisdiction of the second or subsequent court to impose a prison sentence applies solely to the current case. The defendant must be returned to the original sentencing court for potential resentencing on any previous case or cases sentenced under section 1170(h).”</p>	<p>The last in time sentencing judge, if sentencing a defendant to state prison, does not have jurisdiction to address earlier sentences under Penal Code section 1170(h).</p> <p>Please see response above.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Response
			<p>The final sentencing judge is clearly empowered to convert the remaining custodial portion of the earlier section 1170(h) sentence to state prison with credit for time served. The location of custodial sentencing (jail or prison) is not a material term of a sentence (it is merely a matter of housing), so direct conversion of jail to prison, as such, does not as such create an issue. Our Supreme Court has rejected any “protectable interest in serving that sentence in county jail as opposed to state prison.” (<i>People v. Cruz</i> (2012) 207 Cal.App.4th 664, 677.) Similarly, “where a defendant serves his or her sentence under the Realignment Act—prison or jail— does not operate to increase that sentence... .” (<i>People v. Griffis</i> (2013) 212 Cal.App.4th 956, 963 [emphasis in original].)</p>	<p>Please see response above.</p>
			<p>The final sentencing judge is clearly empowered to address any other modification of the earlier section 1170(h) sentence within the confines of current Paragraph 4 of the Rule. For example, that judge may reduce the period of custody or mandatory supervision with no corresponding increase in another component of the sentence as part and parcel of an aggregate determinate sentence under § 1170.1(a). While some modifications may possibly subject the modification to an objection by the People that their plea bargain has been impacted, this dispute could as easily be handled by the last in time judge as by the original judge.</p>	<p>Please see response above.</p>
			<p>The final sentencing judge is clearly empowered to make any other modification of the earlier</p>	<p>Please see response above.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Response
			<p>section 1170(h) sentence with the consent of the parties to any bargain below (the defendant and the People of the State of California).</p> <p>Disempowering the final judge with respect to aggregate sentencing can be expected to introduce uncertainty into otherwise final plea bargaining on that final case: parties will be reduced to resolving the last in time case subject to uncertain adjustment of other (until-then-final) cases subject to approval by a bench officer who is back in the earlier jurisdiction. Obviously, any requirement that an earlier sentenced § 1170(h) matter must then be remanded to a different jurisdiction will burden state resources automatically, without first determining that burden is needed. For many cases, an in custody defendant will need to be transferred between holding facilities of different jurisdictions to revisit the original court, further burdening the state and wasting time.</p> <p>Cases which could be finally resolved in the last settling court should be allowed to be so resolved. Automatic and therefore arbitrary transfers serve no purpose.</p> <p>PROBLEM/COMPONENT 2: THE RESENTENCING JUDGE MUST CONVERT CONDITIONAL RELEASE TO PRISON TIME AND NEED NOT ACCOUNT FOR AGGREGATE SENTENCING RULES § 1170.1(a) WITH CREDIT AGAINST THAT</p>	<p>Please see response above.</p> <p>Please see response above.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

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	Commenter	Position	Comment	Committee Response
			<p>AGGREGATE SENTENCE FOR TIME ALREADY SERVED⁵</p> <p>⁵ “The original sentencing court must convert all remaining custody and mandatory supervision time imposed in the previous case to state prison custody time and must determine whether its sentence is concurrent with or consecutive to the state prison term imposed by the second or subsequent court and incorporate that sentence into a single aggregate term as required by this rule.”</p> <p>Proposed additional paragraph (5) would purport to require punitive sentencing by imposing mandatory prison time for each remaining day of conditional release. This component of the proposed Rule modification is at once contrary to law (or at least confusing), and arbitrarily punitive while purporting to withhold ordinary ameliorative sentencing discretion of judges, in that it mandates that previously ordered conditional release be converted straight to state prison custody. Obviously, judges should retain discretion to early terminate periods of conditional release – including mandatory supervision – where that period of supervision would not be useful, and where additional custody time would not serve the interests of justice. (§ 1170(h)(5)(B).)</p> <p>Moreover, by cutting straight to the remainder of the previously imposed § 1170(h) sentence, the language of this component works an end-run around limitations on subordinate sentences when they form components of an aggregate sentence: for example, one third mid-term and</p>	<p>Please see response above.</p> <p>No response required.</p>

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			<p>one third of charge specific enhancements per § 1170(a), and the prohibition on multiple imposition of status enhancements. (See e.g., <i>People v. Tassell</i> (1984) 36 Cal.3d 77, 90; <i>People v. Sasser</i> (2015) 61 Cal.4th 1, 16-17 [5-year enhancements per § 667, subd. (a), are status enhancements and may be imposed only once per aggregate determinate sentence].)</p> <p>Assuming for purposes of argument that a later state prison sentence was to be run consecutive to an earlier § 1170(h) sentence, the proper manner to calculate the total sentence would be to determine the applicability of sentencing limitations (e.g., § 654), then with respect to charges with sentences to be imposed and not stayed, to determine which charge would be the principal term and which charges' terms would run concurrent and which consecutive to that term, then to calculate the consecutive terms as subordinate terms, as described in § 1170.1(a). Any charge specific enhancements would be dismissed, stricken, or added to the principal term, and dismissed, stricken, or added at a one third rate to the subordinate term(s). Then any applicable status enhancements would be dismissed, stricken, or imposed once only for the aggregate sentence. At that point credit for time served would be awarded for all time served on the aggregate sentence, per applicable law, including any time credited per § 1170(h)(5)(B) [mandatory supervision], and any special credits earned through custodial authorities. (See, e.g., §§ 4019.4 [incentive</p>	<p>Please see response above.</p>

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			<p>milestone credits in jails] and 2933.05 [incentive milestone credits in prisons], Prop. 57, adopted Gen. Elec. (Nov. 8, 2016).)</p> <p>Obviously, to the extent that certain elements of clemency were included in the indicated sentence or prosecution offer that induced a court approved guilty plea, those elements of clemency would need to be respected. Further, to the extent that an earlier sentencing judge determined concurrent sentencing, striking, or dismissal of other allegations was appropriate (or made other discretionary sentencing decisions), such determinations would need to be respected.</p> <p>To the extent that the original sentence included a significant term of release conditional upon future compliance with rules of supervision, arbitrary revocation of that conditional release would offend minimal due process standards and basic concepts of fairness. (See e.g., in <i>Morrissey v. Brewer</i> (1972) 408 US 471, 481-848 [persons on conditional release such as parolees have substantial interests in continued liberty and at a minimum, the “discretionary aspect of the revocation decision need not be reached unless there is first an appropriate determination that the individual has, in fact, breached the conditions of [conditional release].”].) In this unique circumstance, perhaps whatever remaining portion of the previously § 1170(h) sentence remains (once recalculated as a § 1170.1(a) subordinate sentence and offset with credit for time served)</p>	<p>Please see response above.</p> <p>Please see response above.</p>

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	Commenter	Position	Comment	Committee Response
			<p>must be either terminated (§ 1170(h)(5)(B)) or designated time remaining to be served on conditional release (i.e., mandatory supervision), unless the supervisee has actually violated a term of release.</p> <p>COMPONENT 3: ANY TIME AN § 1170(h) SENTENCE IS FOLLOWED BY A PRISON SENTENCE, A COURT MAY RESENTENCE THE § 1170(h) CHARGES WITHOUT REGARD FOR THE TERMS OF A PLEA BARGAIN INDUCING IT, AND WITHOUT REGARD FOR EARLIER DISCRETIONARY JUDICIAL SENTENCING DECISIONS⁶</p> <p>⁶ “Number (4) does not apply—and the consent of the defendant is not required—for this conversion and resentencing.” Also, the proposed rule modification would add to the start of Paragraph (4) “If all previously imposed sentences and the current sentence being imposed by the second or subsequent court are under section 1170(h),” the later sentencing judge may reformulate the earlier § 1170(h) sentence, but only in compliance with provisions to respect plea bargains and judicial discretion.</p> <p>Proposed additional paragraph (5) would purport to expressly exempt judges from the safeguards mandating respect for plea bargains approved by earlier sentencing judges whenever aggregating an earlier-sentenced § 1170(h) case.</p> <p>The proposed Rule as modified would seem to authorize unilateral deviation from agreed upon dispositions that were the bases of guilty pleas, expressly providing that negotiated terms may</p>	<p>No response required.</p> <p>Please see response above.</p>

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SPR20-12

Criminal Procedure: Multicounty Incarceration and Supervision (Amend Cal. Rules of Court, rule 4.452)

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			<p>be changed to the detriment of defendants without their consent.</p> <p>A defendant in a criminal case has both a statutory right and Constitutional due process right to enforcement of his plea bargain. (§ 1192.5; <i>People v. Villalobos</i> (2012) 54 Cal.4th 177, 181-182; <i>Brown v. Poole</i> (9th Cir. 2003) 337 F.3d 1155, 1159; <i>People v. Walker</i> (1991) 54 Cal.3d 1013, 1025.) Note that defendants negotiating sentencing under § 1170(h) may prefer quicker completion (straight jail), or a longer period of less restricted freedom (mandatory supervision), or a combination thereof. In enforcement of the plea bargain contract:</p> <p style="padding-left: 40px;">“we employ objective standards-it is the parties’ or defendant’s reasonable beliefs that control.... The construction we adopt, however, incorporates the general rule that ambiguities are construed in favor of the defendant. Focusing on the defendant’s reasonable understanding also reflects the proper constitutional focus on what induced the defendant to plead guilty.”</p> <p>(<i>Brown v. Poole, supra</i>, 337 F.3d at p. 1160 [emphasis in original].) In the event that a sentencing judge exercises its discretion to refuse to honor a plea agreement as made, and insists upon any significant change to the terms of the plea bargain (including imposition of additional terms of supervision, or revocation of</p>	<p>No response required.</p>

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			<p>conditional release), this should trigger an immediate duty to advise the defendant of his right to withdraw his plea and admissions. (Pen. Code § 1192.5; <i>People v. Villalobos</i> (2012) 54 Cal.4th 177.) Once the plea bargain has been approved or detrimentally relied upon by the defendant, the defendant is generally entitled to specific enforcement of that agreement. (<i>People v. Cantu</i> (2010) 183 Cal.App.4th 604, 607.) Plea withdrawal would send the open case back to the earlier sentencing county with new issues.</p> <p>SUGGESTED REVISION TO PROPOSED CHANGE</p> <p>The clause added at the beginning of paragraph (4) in the proposed rule modification should be cut.⁷ Paragraph (4) should remain materially intact going forward as a safeguard to protect plea bargains against unilateral modification post- plea. This will help avoid large scale plea withdrawals and general disruption of plea finality.</p> <p>⁷ “If all previously imposed sentences and the current sentence being imposed by the second or subsequent court are under section 1170(h), the second or subsequent judge court has ...”</p> <p>If proposed paragraph (5) is to remain in the modified rule, we recommend the following changes:</p> <p>(5) <u>If the date of violation of a crime proved in the second or subsequent case post-dates the earlier imposition of sentence in an</u></p>	<p>The committee declines the proposed changes, due to the reasons stated above.</p> <p>The committee declines the suggestion. The substance of the recommended change already is included in the proposed rule.</p>

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		<p><u>earlier case and may serve as a violation of terms of conditional release on such earlier case, (unless waived by the defendant) the matter must be remanded to the original sentencing judge for disposition. (People v. Arbuckle (1978) 22 Cal.3d 749.)</u></p> <p>(6) If the second or subsequent court imposes a sentence to state prison because the defendant is ineligible for sentencing under section 1170(h), <u>that court must determine whether its sentence is concurrent with or consecutive to the section 1170(h) sentence imposed by the original or earlier sentencing court.</u> The jurisdiction of the second or subsequent court to impose a prison sentence applies solely to the current case, <u>other than (a) termination of any remaining period of mandatory supervision in an earlier section 1170(h) sentence, (b) conversion of the custodial portion of the earlier section 1170(h) sentence to state prison, (c) any other modification of the earlier section 1170(h) sentence that reduces the period of custody or mandatory supervision with no corresponding increase in another component of the sentence, or (d) any other modification of the earlier section 1170(h) sentence with the consent of the defendant. In all circumstances, credit including all applicable conduct and milestone credits shall be awarded for time served in custody or on mandatory supervision.</u></p> <p>(7) <u>In any instance where concurrent sentencing is imposed, the final sentencing judge shall specify that each current jail</u></p>	<p>The committee declines the suggestion. The second or subsequent court imposing a state prison sentence only has jurisdiction over that case. The earlier sentencing court must determine whether its sentence is concurrent or consecutive to the subsequent court’s sentence. The second or subsequent court does not have jurisdiction over modifications of the earlier Penal Code section 1170(h) case.</p> <p>The committee declines the suggestion, as it is contrary to Penal Code section 669(d).</p>

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		<p><u>sentence per § 1170(h) and each state prison sentence may be served in any penal institution. The final sentencing judge shall specify which portions of any remaining concurrent custodial time shall be served in the jail of the originating jurisdiction, or in prison.</u></p> <p>(8) <u>If the second or subsequent sentencing court imposes a consecutive sentence, that later sentence shall be calculated as a subordinate term (per section 1170.1(a)) if possible. If that later and consecutive sentence must serve as the principal term, the later sentencing court may recalculate custodial and supervised release portions of the earlier sentence in compliance with paragraph (5)(a)-(d), above. If further modification of the earlier sentence is necessary and paragraph (5)(a)-(d) cannot resolve those modifications, ¶the defendant must be returned to the original sentencing court for potential resentencing on any previous case or cases sentenced under section 1170(h). If ¶the original sentencing court cannot reasonably complete the resentencing by consent or in compliance with paragraph (5)(a)-(d), that court shall vacate the earlier plea and the case shall proceed as if the plea had not occurred. When the case is resolved, credit shall be awarded for all custodial and conditional release time served, including applicable conduct and milestone credits if any must convert all remaining eustody and mandatory supervision time imposed in the previous case to state prison eustody time and must determine whether its sentence is concurrent with or consecutive to the</u></p>	<p>The committee declines the suggestion. The second or subsequent court imposing a state prison sentence only has jurisdiction over that case, so it would not impose a consecutive sentence to the earlier Penal Code section 1170(h) sentence.</p>

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			<p>state prison term imposed by the second or subsequent court and incorporate that sentence into a single aggregate term as required by this rule. Number (4) does not apply—and the consent of the defendant is not required—for this conversion and resentencing.</p> <p>These changes would anticipate renumbering of the original paragraphs (5)-(8) (paragraphs (6)-(9) in the proposed Rule as modified) accordingly. The proposed substantive modifications to Rule 4.452 are a mistake and need to be fixed.</p>	
3.	Superior Court of Orange County		<ul style="list-style-type: none"> • Does the proposal appropriately address the stated purpose? <p>Yes, as vacating an out-of-county 1170(h)(5) sentencing for a jail commitment violates</p>	

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			<p>jurisdictional issues, and the defendants statutory rights to a MSV: Formal Hearing, but also fails to address MS terms such as restitution, court-ordered programs, etc. should MS be terminated and committed to jail for the remainder of the term. Rule may require more directive as to the originating court with regard to resentencing of the defendant, or moving the court for a MS violation hearing.</p> <ul style="list-style-type: none"> • Would the proposal provide cost savings? If so, please quantify. <p>No, unless the case(s) were either transferred after sentencing pursuant to Penal Code section 1203.9, or consolidated prior to sentencing. If a case in Orange County carries the larger term, than the lower term based on the sentencing term before it then becomes subordinate, or can possibly be re-sentenced to 1/3 the mid. Since our Court does not have the authority to re-sentence the defendant, the defendant may need to be transported to the originating jurisdiction, which doesn't incur court costs, but does affect costs incurred to law enforcement agencies.</p> <ul style="list-style-type: none"> • What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? <p>Courtroom staff would require training as to the process of re-sentencing due to this Rule of Court</p>	<p>The committee appreciates the comment. Because it would require a substantive change to the rule, it is beyond the scope of this proposal. The committee will take the suggestion into consideration for future amendments of the rule.</p> <p>No response required.</p> <p>No response required.</p>

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			<p>change. Docket codes, and procedures would need to be updated, as necessary.</p> <ul style="list-style-type: none"> • Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes • How well would this proposal work in courts of different sizes? <p>If the concern is with regard to smaller courts, the proposal may work even better as the case load is more than likely smaller than the courts of a larger size. Unless assigned to a particular judicial officer for specified purposes, consolidation of cases can be handled by the larger court in the event that re-sentencing take place. Communication between parties will more than likely be needed/recommended.</p>	<p>No response required.</p> <p>No response required.</p>
4.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No Specific Comment	No response required.

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